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The case is *State of Kansas* v. *City of Kansas City*. The case was actually decided by the Supreme Court within two weeks after it was commenced in the district court. The opinion was filed February 24, 1922, but had not been published at the date of this writing. E. R. S.

PROOF OF CHARACTER—BURDEN OF PROOF ON MATTER OF JUSTIFICATION—ATTORNEY'S USE OF HIS OWN NOTES OF THE EVIDENCE IN ARGUMENT. PEOPLE v. WILLY, 133 N. E. 859 (ILL.).—The prosecution was for murder, and one of the contentions of defendant was that his character was that of a peaceful, law-abiding citizen, and evidence pro and con was introduced on this issue. The court of review held that character can be evidenced by general reputation only. This suggests an old contention, the history of which is well sketched by Professor Wigmore. WIGMORE ON EVIDENCE, Sec. 1981 *et seq.* The opinion in *R.* v. *Rowton*, Leigh & C. 520, is largely responsible for the propagation if not the initiation of the heresy, opposed not only to well-established authority but in violation of common sense, to the effect that character cannot be evidenced by the testimony of persons speaking out of intimate knowledge of the character to be evidenced. This heresy spread to this country, and the court doubtless speaks correctly when it says that the great weight of authority supports it. This doctrine is particularly pernicious in its application to the evidence of character introduced by the defendant as evidence of his innocence, since here it loses the principal prop in its support, namely, that it takes the person whose character is involved by "unfair surprise." The contrary doctrine has the better reason and more than casual authority in its support, and by reason of its "sweet reasonableness" should win general allegiance in the long run. See *Trial of Cowper et al.*, 13 HOW. ST. TRIALS, 1180; *Thomas Hardy's Trial*, 24 HOW. ST. TRIALS, 999; *People* v. *Wade*, 118 Calif. 672; *Stamper* v. *Griffin*, 12 Ga. 453; *Bowlus* v. *State*, 130 Ind. 227, and *State* v. *Sterrett*, 68 Iowa 180, among many others which might be cited.

The evidence in the case left no chance for doubt of the killing by defendant, but there was a sharp conflict on the question of whether the killing was justified. The court, while applying a modified form of it, affirmed the rule to be that the burden of proof on the question of justification is with the defendant. This again presents no new contention and illustrates anew what is sure to happen when courts brush aside logic and precedent in the interest of the individual. It may be quite true that many changes ought to be made in the rules of evidence, and something of an argument made even for plenary discretion in the trial court over all questions of admissibility. If, however, we are to have rules of evidence we should not cease to plead that they be consistent with our rules of substantive law and logical in their application. If we are going to say that one should not be found guilty until every reasonable doubt of his guilt has been removed, we must say that if there is a reasonable doubt of whether the defendant killed in self-defense he must be acquitted. And yet the

rule as stated by the court in the opinion under discussion, by putting the burden of this issue upon the defendant, would allow the jury to find guilt, though it was unable to say that the killing was not justified. We must concede great conflict in the authorities here, much of it evidently resulting from loose thinking upon what is meant by "burden of proof." The modification of the rule as applied by the court would relieve the defendant from this burden whenever the evidence of the state shows that defendant claimed to act in self-defense. The rule in each of its forms has the considerable support of courts entitled to respect. We have it, (a) a reasonable doubt as to whether defendant acted in self-defense requires an acquittal; (b) unless there is a preponderance of evidence in favor of defendant's contention that he acted in self-defense he should be convicted; and (c), where there is no reasonable doubt but that defendant did the killing the burden is on him to produce a preponderance of evidence to show that the killing was in self-defense, unless the evidence of the state discloses that the defendant claims to have acted in self-defense, when the contrary would be true. The court applied the rule as last stated upon the authority of *State* v. *Patterson,* 45 Vt. 308, 12 Am. Rep. 200, without, singularly enough, making any reference to *Alexander* v. *People,* 96 Ill. 96, or *Kipley* v. *People,* 215 Ill. 358, both of which are precisely in point. Conflict cannot be eliminated by detailed discussion of the cases. An excellent resume of them up to the time of its publication can be found in a note to *Com.* v. *Palmer, 222* Pa. 299, as reported in 19 L. R. A. (n. s.) 483. In the abstract, no rule can be right which is wrong in principle, and if it be the law that guilt cannot be found without conviction of it beyond a reasonable doubt, then the rule applied by the court, which allows it to be done, is wrong.

It may not be quite without justification to refer to the holding of the court that it was error to allow the state's attorney, in his argument to the jury, to refer to and read notes of evidence made by him during the trial. There was no contention that the attorney made any other claim than that he was giving his recollection of the evidence as refreshed by his notes. That so common, and may it be said so reasonable, a practice should vitiate a trial is but to stimulate a practice so loose as to encourage the assignment of almost any triviality as error. V. H. L.

STREETS—STATUTORY DEDICATION—VACATION AND REVERTER.—The common law dedication of a street confers on the public a right of user in the nature of an easement. The "fee" of the street continues in the dedicator; he may enjoy and use it in any manner not inconsistent with street uses; if the street is vacated or abandoned he enjoys it, as originally, free from the burden of public rights. TIFFANY, REAL PROPERTY (Ed. 2), § 486; DILLON, MUNICIPAL CORPORATIONS (Ed. 5), § 1076. But if the dedicator transfers a lot or block abutting on the street, his conveyance is presumed to carry the title to the center of the street. TIFFANY, *op. cit.,* § 446; 3 KENT, COMMENTARIES, 433. "The effect thus given to conveyances * * * is based not only on the presumption that the parties intend the ownership thereof